

Statement of Reasons

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THE COURT: As you know, I've been dealing with this matter for several months trying to determine the answer to the question first of what Mr. Rodriguez' medical status was, or is, and whether, if he has a disability, that disability can be adequately accommodated within the -- or by the Bureau of Prisons.

I have reviewed the medical records or a substantial number of the medical records of Mr. Rodriguez. I appointed Dr. Gross to examine and assess him. I am persuaded by a preponderance of the evidence that he has a seizure disorder, that he has epilepsy.

I also am persuaded, however, that that disorder can be accommodated by the Bureau of Prisons.

Dr. Gross has told me that in his expert opinion what is required is care by a neurologist. Ideal care would be by an epileptologist, but that most people who have epilepsy are cared for by neurologists.

I am persuaded that the Bureau of Prisons has the ability to make neurologists available for Mr. Rodriguez in the manner that Dr. Gross thinks most appropriate.

I'm persuaded as well that the monitoring that Dr. Gross thinks is necessary can be accomplished within the Bureau of Prisons.

1 I might say that my own experience with people whom
2 I know who have epilepsy informs me that the idea of the --
3 that many people who have epilepsy do not have this buddy
4 system. They operate, depending on the degree of disability
5 they have, but they operate normal lives, relatively normal
6 lives; and if they have a seizure, they have a seizure when
7 they have it, where they have it, with people responding or not
8 depending on when the seizure occurs and where it occurs.

9 I once had an intern who had a seizure disorder,
10 and for the most part I wasn't aware that she had such a
11 disorder.

12 Essentially what I'm saying is that if the buddy
13 system is provided for Mr. Rodriguez, it may be that he may
14 have more attention than he would on the outside.

15 In any case, I'm satisfied that he has the degree
16 of attention that Dr. Gross believes he should have or he will
17 have that within the Bureau of Prisons.

18 So I don't believe that there is an occasion for me
19 to release him because the Bureau of Prisons cannot care for
20 him.

21 Now, the question then arises whether this
22 sentence, in light of all the circumstances, the sentence
23 prescribed by the guidelines is a reasonable sentence.

24 I start in making that determination with the
25 proposition that Mr. Rodriguez has these multiple physical

1 issues. He has the problem of the seizure disorder; he may
2 have a second problem arising from the bullet fragments in his
3 head; he has asthma; this episode of hypoglycemia has never
4 been truly resolved as far as I can tell. So there are
5 multiple physical problems which complicate any sojourn in the
6 Bureau of Prisons system, although I believe they can be
7 accommodated.

8 Mr. Rodriguez is charged with distribution of
9 cocaine base, not with conspiracy.

10 The question of whether he's a member of a gang is
11 not clear, it hasn't been resolved, so I don't find that he is
12 a member of a gang.

13 He's charged with a single transaction, and while
14 the amount is 1.8 grams, it's not insignificant, it is
15 relatively insignificant compared with people involved in the
16 related cases.

17 On the other hand, as Mr. Wortmann points out,
18 there are five predicate convictions, ten convictions overall,
19 so Mr. Rodriguez is in every sense a career offender.

20 Taking account of all of the factors --
21 Mr. Rodriguez' criminal history, the offense of conviction,
22 what he's charged with and what he has pleaded guilty to, and
23 his health -- I have determined that a reasonable sentence
24 outside the guidelines is appropriate. And I am prepared to
25 make that judgment now.

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